

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

COLORADO PRIME CORPORATION

Employer^{1/}

and

TEAMSTERS LOCAL UNION NO. 688, affiliated with the INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

Case 14-RC-12360

**REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{2/}
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{3/}

All full-time and regular part-time driver/representatives, loaders and distribution warehouse employees employed by the Employer at its Pacific, Missouri facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking

employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

Teamsters Local Union No. 688, affiliated with the International Brotherhood of Teamsters, AFL-CIO

ELECTION NOTICES

In accordance with Section 102.30 of the Board's Rules and Regulations, the Employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. These notices are to remain posted until the end of the election. Failure to post the election notices as required will be grounds for setting aside the election whenever proper and timely objections are filed. A party is estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice. As used in this paragraph, the term "working day" means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at 1222 Spruce Street, Room 8.302, Saint Louis, Missouri, on or before **June 19, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **June 26, 2002**.

Dated June 12, 2002

at Saint Louis, Missouri

Mary J. Tobey, Acting Regional Director, Region 14

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- 1 The Employer's name appears as amended at hearing.
 - 2 The Employer, Colorado Prime Corporation, a New York corporation, with its principal offices located in Farmingdale, New York, and a distribution warehouse located in Pacific, Missouri, the only facility involved, is engaged in the retail sale of frozen food.
 - 3 The unit description appears as amended at hearing.

The record discloses that the petitioned-for unit is an all employee unit consisting of approximately eight driver/representatives and two loaders and distribution warehouse employees employed at the Employer's Pacific, Missouri facility, excluding the regional manager and an office clerical employee. The parties stipulated, and I agree, that the regional manager is a supervisor within the meaning of the Act.

At hearing, the Employer took no position on the appropriateness of the unit. When the unit sought is presumptively appropriate, the burden is on the employer to show that the unit is inappropriate. *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999) Here, the Employer does not maintain the unit is inappropriate. Accordingly, in the absence of any dispute as to the appropriateness of the unit and since an all employee unit at a single facility is presumptively appropriate, I find the unit is appropriate. *Health Acquisition Corp.*, 332 NLRB No. 134 (Nov. 30, 2000); *AVI Foodsystems, Inc.*, supra; *Mariah, Inc.*, 322 NLRB 586 (1996)